

NO. 48941-4

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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PATRICK NATHAN SHENAURLT,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

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Appeal from Pierce County Superior Court  
Honorable Katherine M. Stolz  
No. 15-1-04581-6

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BRIEF OF APPELLANT

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## **I. INTRODUCTION**

Defendant was convicted at jury trial on two counts of Assault in the Third Degree arising from an altercation with the Tacoma city police. Officers contacted the defendant after reports he was screaming in the street that he was Jesus, Saint Patrick, and would sacrifice himself. Defendant was noted as being “mentally deranged” and the officers eventually decided to arrest him for violating Tacoma’s noise ordinance. Defendant began to struggle during the arrest and struck the officer’s twice during the altercation, constituting both counts. Defendant appeals the finding that he had the requisite intent to commit assault due to his mental incapacitation. During deliberation, the jury submitted a question about the statutory meaning of ‘intent.’ They queried whether they had to find that Defendant had the intent to commit the specific crime of assault, or whether he simply had intent to commit ‘any crime.’ The presiding judge answered the question without notifying either counsel, in direct violation of the Court Rule and case law. Defendant submits that this was not a harmless error and that it affected a substantial right.

## **II. ASSIGNMENTS OF ERROR**

1. The trial court made a substantial error that is grounds for a new trial when it answered a jury question during deliberations without the presence or knowledge of counsel. The jury’s question concerned the central issue of intent which critically required defense counsel’s input, without which the defendant’s rights were profoundly and materially affected.

2. The trial court erred when it permitted a finding that that defendant had the requisite intent for assault, when the evidence clearly indicated he was mentally incapacitated.

### **III. STATEMENT OF CASE**

Defendant Patrick Shenaurlt was contacted by police in the city of Tacoma after several citizen calls reporting an individual screaming in the street about killing himself, the devil, and other unusual statements. Upon contact, the officers reported that the “mentally deranged” character of defendant (VRP 127) was apparent and his unusual statements continued: when asked for his name, Defendant responded, “Jesus Christ” (VRP 41), that he was Saint Patrick (VRP 119), that he was going to sacrifice himself (VRP 94), and that “I don't know who I am”/“I don't know where I am” (VRP 226). After informing the defendant that there was noise ordinance and that he should keep quiet, Defendant began whispering to them. (VRP 41.) The officers decided that he was not a danger to himself and there were no grounds for arrest, but after they returned to their vehicles and shut the door, he began screaming again. (VRP 43.) The officers then decided that arrest was appropriate, whereupon Defendant began resisting, eventually being subjected to pepper spray and an elbow strike upon Officer Sprangler. This elbowing was the basis for Count I, which the testimony at trial agreed occurred when Defendant was not facing the officer. The officer testified:

A. Correct. There was no reason for the male to throw his elbow backwards because he had already broken free of my grasp. (VRP 58, Testimony of Officer Sprangler).

Officer Spangler reported that this hit was a direct, purposeful hit that was not flailing. (VRP 58.) But defense submitted throughout the trial that it was clearly an unintentional result of flailing because Defendant was not facing the officer. Moments later Count II was allegedly committed when Defendant kicked Officer Wabascum.

Defendant did not enter a defense of diminished capacity or temporary insanity at trial, but the issue of intent and mental health was addressed throughout the trial. During deliberations, the jury submitted the following question:

Jury Question: In instruction number 9, does the phrase ‘when acting with objective or purpose to accomplish a result that constitutes a crime’ [from RCW 9A.08.010(a), defining ‘intent’] refer to any crime or the specific crime of assault in this case?

Response: You must go off the instructions as written. (Clerk’s Papers, ‘Jury Question’)

Neither the State nor defense counsel was informed or summoned by the Court to address this question in open court, in direct violation of CrR 6.15(f). The “Response” of the court appears to have been submitted to the jury by the bailiff in the jury room, not in open court.

After a verdict of guilty, defense counsel timely objected on the above basis, whereupon the trial court entered an order finding that the error was harmless.

Defendant appeals.

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#### IV. ARGUMENT

- A. **The trial court made a substantial error that is grounds for a new trial when it answered a jury question during deliberations without the presence or knowledge of counsel. The jury's question concerned the central issue of intent which critically required defense counsel's input, without which the defendant's rights were profoundly and materially affected.**

1. LAW

Any communication between the court and the jury in the absence of the defendant is error and must be proven by the State to be harmless beyond a reasonable doubt. *State v. Caliguri*, 99 Wn.2d 501, 509, 664 P.2d 466 (1983). *State v. Langdon*, 42 Wn.App.715, 713 P.2d 120 (1986).

CrR 6.15(f) states: (1) Questions from Jury During Deliberations.

(1) The jury shall be instructed that any question it wishes to ask the court about the instructions or evidence should be signed, dated and submitted in writing to the bailiff.

The court shall notify the parties of the contents of the questions and provide them an opportunity to comment upon an appropriate response. Written questions from the jury, the court's response and any objections thereto shall be made a part of the record. The court shall respond to all questions from a deliberating jury in open court or in writing.

...

The burden of proving harmlessness is on the State and it must do so beyond a reasonable doubt. *State v. Saraceno*, 23 Wn.App. at 475–76, 596 P.2d 297 (1979).

An error is harmless if the appellate court is convinced beyond a reasonable doubt that any reasonable jury would have reached the same result in the absence of the error. *State v. Guloy*, 104 Wn.2d 412, 705 P.2d 1182 (1985).

Criminal Rule 7.5(a) states the grounds for granting a new trial when a substantial right of the defendant was materially affected, including irregularity or proceedings (5) or an error of law (6).

## 2. ANALYSIS

Here, it is clear that the court made an error by not informing counsel of the jury's question. The trial court appears to admit as much in its Order on Motion to Arrest Judgment and/or Motion for New Trial. The question then is whether this error is 'harmless.'

Appellant submits that the error was profoundly harmful. The jury's question concerns a central and substantive question about 'intent' to assault, which was the core of both counsels' arguments during trial. The issue the jury raises is critical:

...does the phrase 'when acting with objective or purpose to accomplish a result that constitutes a crime' refer to any crime or the specific crime of assault in this case?

The question references the statutory definition of intent, as set forth in RCW 9A.08.010(a): "A person acts with intent or intentionally when he or she acts with the objective or purpose to accomplish a result which constitutes a crime."

The jury's question is very clear, reasonable, and has an answer that requires the input from counsel. It is clear that assault is a crime which requires specific intent *to assault* and not just any general intent to commit any crime. See *State v. Wilson*, 125 Wn.2d 212, 883 P.2d 320 (1994). If the jury interpreted the intent statute incorrectly, to mean that Defendant struck the officers only with a general intent to commit any crime (and not



necessarily assault specifically), then the evidentiary threshold for finding guilt is radically reduced. In other words, it is much easier to find that Defendant, during his erratic episode, had general criminal intent during the time period when the officers were struck, than to find that he specifically had the intent to assault. Indeed, the post-conviction declaration of presiding juror, Ralph McDowell, although not submitted here as evidence, demonstrates that a jury can easily be confused by the meaning of the intent statute.<sup>1</sup>

Instead of a clear answer, the court simply referenced the jury back to the unclear instructions. Defense counsel had no opportunity to address the question or give its input. The specific language of jury instructions is at the trial court's discretion. *Levea v. G.A. Gray Corp.*, 17 Wn.App. 214, 224-25, 562 P.2d 1276 (1977). This trial court, therefore, had the ability to address the jury's question specifically, and was not restricted to say no more than "you must go off the instructions as written." The trial court should have directly answered the jury's question with the presence and input of counsel.

This is not a harmless error because it is clear the jury's findings, especially for Count I, could have gone either way depending on the answer

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<sup>1</sup> The jury question came back with no clarification, therefore we had to "go off the instructions as written". As written, the instructions say "a crime" not "this crime" or "assault". At this point I must be clear; I would not have voted guilty in this case if Instruction No 9 was further clarified to say "this crime" or "the crime the defendant is charged with" or "assault" or any number of other clarifying remarks which would have meant "a result that constituted assault". I further state that several other jurors felt the same way, and stated so during deliberations. They would not have voted guilty for the same reasons I stated above.

to their question. The jury very well could not have reached the same result in the absence of the error, as addressed in *Guloy, supra*.

Because this error was not harmless, a substantial right of the defendant which materially affected his rights occurred and a new trial should be granted.

**B. The trial court erred when it permitted a finding that that Defendant had the requisite intent for assault, when the evidence clearly indicated he was mentally incapacitated.**

1. INTRODUCTION

Although Defendant did not plead any sort of insanity before trial, “it is not necessary to plead mental irresponsibility in order to prove lack of intent.” *State v. Welsh*, 8 Wn.App. 719, at 722, 508 P.2d 1041 (1973). Appellant argues that the evidence was clear, because he did not even know who he actually was and that he could not have formed the necessary *mens rea* to commit a crime.

2. LAW

Evidence is sufficient to support a guilty finding if “after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (emphasis omitted) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)). An evidence sufficiency challenge “admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d

1068 (1992). Appellate courts defer to the jury's assessment of conflicting testimony, witness credibility, and evidence weight. *State v. Carver*, 113 Wn.2d 591, 604, 781 P.2d 1308 (1989).

RCW 9a.36.031 – Assault in the third degree requires “specific intent” to assault:

(1) A person is guilty of assault in the third degree if he or she, under circumstances not amounting to assault in the first or second degree:

a) With intent to prevent or resist the execution of any lawful process or mandate of any court officer or the lawful apprehension or detention of himself, herself, or another person, assaults another; or

(g) Assaults a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault; or

“It is not necessary to plead mental irresponsibility in order to prove lack of intent.” *Welsh* at 722. (RCW 10.77.030.) The inability to form a “specific intent” must occur at a time relevant to the offense. *State v. Craig*, 82 Wn.2d 777, 514 P.2d 151 (1973). A mental disorder may be sufficient basis to prove a defendant was unable to form intent. *State v. Edmon*, 28 Wn.App. 986, 21 P.2d 1310 (1981) . Similarly, although voluntary intoxication does not render an act less criminal it may be considered as tending to negate “specific intent” when intent is a necessary element of a particular offense or degree of offense. *State v. Mriglot*, 88 Wn.2d 573, 564 P.2d 784 at 785 (1977). In addition, intent may be absent if a defendant is insane. *State v. Box*, 109 Wn.2d 320 at 334, 745 P.2d 23 (1987).

Taken together, it is clear that intent may be challenged at trial on any number of factors. If intent is a required element of a crime, as it is here

in Assault third degree, the State has the burden of proving it beyond a reasonable doubt and the defendant has the right to challenge the presence of his intent.

### 3. ANALYSIS

Here, the trial court erred when it permitted the jury's findings that Defendant had the requisite intent for assault. No rational trier of fact could have found that Defendant was mentally capable at the time of this event of forming the requisite intent to assault. Defendant did not know who or where he was, repeatedly declared that he was Jesus or Saint Patrick, and responded to the officers in what can only be perceived as mentally incapacitated matter showing no ability to form specific intent.

The officers testified that they had "online" mental health crisis training ( VRP 64), and that they offered to take Defendant to the hospital to talk to mental health professionals (VRP 69). The officers clearly recognized that Defendant had mental health problems, and were not keen on simply throwing him in jail for being a criminal. He was noted as being "mentally deranged." The Judgment and Sentence ordered Defendant to undergo a mental health evaluation.

Taken together, all of this evidence indicates that Defendant was, by one means or another, mentally hampered during the event and lacked intent. His apparent assaults were clearly an involuntary result of this lack of self-awareness and mental coherence. The trial court, therefore, erred when it permitted the jury's finding of guilt as to assault.

## V. CONCLUSION

The trial court erred when it violated the court rules causing a substantial, harmful error. Furthermore, the evidence clearly could not support a finding that Defendant had the intent to commit an assault when he didn't even know his own identity.

Respectfully submitted this 2nd day of September, 2016.

/s/ Edward Penoyar

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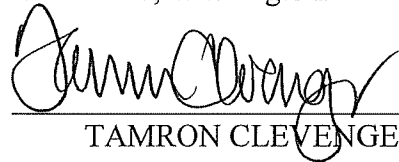
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